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Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Hollis Whitaker

File: B-245933

Date: February 28, 1992

Digest

An employee is not entitled to real estate selling expenses upon his transfer to a new duty station when the home that was sold was not located at his old duty station and he did not regularly commute between the home and his place of work, as travel regulations require, regardless of the fact that he may have received erroneous advice from agency personnel.

DECISION

Mr. Hollis Whitaker, a civilian employee of the Department of Defense (DOD), appeals our Claims Group's settlement[1] denying his claim for real estate expenses incurred incident to the sale of his Knoxville, Tennessee residence. For the reasons stated below, we sustain the settlement.

In September, 1988, Mr. Whitaker transferred from Fort Devens, Massachusetts to Washington, D.C. and was authorized full relocation benefits. Although Mr. Whitaker maintained an apartment in Massachusetts, he claimed real estate expenses for the sale of his residence in Knoxville, Tennessee, where he had lived before accepting the position at Fort Devens. Mr. Whitaker had been self-employed at the time he accepted the position at Fort Devens.

Both the agency and our Claims Group correctly denied Mr. Whitaker's claim, citing the well-established rule that real estate expenses may be paid for the sale of a residence (or settlement of an unexpired lease) located in an employee's old duty station, which in his case was Fort Devens, only when the residence sold is one from which the employee regularly commuted to and from work. See 5 U.S.C. § 5724a (1988) and the Federal Travel Regulations, 41 C.F.R

[1] Z-2867215, Jun. 17, 1991.

§§ 302-6.1 and 302-1.4(j) (1990). See also Gary M. Sudhoff, B-227786, Mar. 10, 1988.[2]

In his request for reconsideration, Mr. Whitaker alleges that he had informed the appropriate agency officials that he would be requesting real estate expenses for his Knoxville residence and that he was assured those expenses would be paid. In fact, his travel order authorizes the shipment of household goods from Knoxville, Tennessee to Washington, D.C. Also, the box on the order for "real estate expenses" is checked, but not the one for "unexpired lease expenses". Legally, he was entitled to both, since he had a lease in Massachusetts and was entitled to real estate expenses for the purchase of a residence at his new duty station.

The authorization to ship Mr. Whitaker's household goods from Knoxville was proper and did not mean that real estate expenses for the sale of that residence also were authorized. The authority to pay real estate expenses and the transportation of household goods arise under different sections of the United States Code and each has its own requirements. Compare, 5 U.S.C. § 5724 and 5 U.S.C. § 5724a. Unlike the limitation imposed on the sale of a residence, described above, household goods may be shipped from locations other than the employee's old duty station. Indeed, this authority is expressly stated in DOD's agency regulations. Joint Travel Regulations, vol. 2, para. C8002-4 (Change No. 267, Jan. 1, 1988).

The agency's report does not address Mr. Whitaker's allegation that agency personnel assured him that he was entitled to real estate expenses for the sale of his Knoxville home. However, even if he were so advised, it also is a well-established rule that erroneous advice does not provide the basis for payment of an expense that is not authorized by law. Dr. Merfyn Williams, B-240095, Aug. 1, 1990, and cases cited.

for Seymour Efros
James F. Hinchman
General Counsel

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[2] Mr. Whitaker alleges that new appointees to manpower shortage positions, who necessarily do not have old duty stations, are entitled to real estate expenses. However, their benefits are limited to those authorized at 5 U.S.C. § 5723 (1988), which includes transportation of household goods, but does not include real estate expenses.